



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,283	02/14/2002	Matthias Rath	11957/20	3317

26646 7590 09/30/2003

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 09/30/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,283

Applicant(s)

RATH, MATTHIAS

Examiner

Irene Marx

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-3, and 8-9 drawn to a composition comprising two or more Krebs cycle compounds and/or precursors and cofactors thereof, classified in Class 424, subclass 93.1, for example.

II. Claim 4-5, and 8-9 drawn to a composition comprising two or more chemical substances of respiratory chain cycle compounds and/or precursors and cofactors thereof, classified in Class 424, subclass 557, for example.

III. Claim 6-9 drawn to a composition comprising two or more urea cycle intermediates, and/or precursors and cofactors thereof, classified in Class 424, subclass 93.21, for example.

IV. Claim 10-12 and 17-18 drawn to a process of improving bioenergy of cells by administering a composition comprising two or more Krebs cycle intermediates, precursors or cofactors, classified in Class 514, subclass depending on the compounds.

V. Claims 13-14 and 19 drawn to a process of improving bioenergy of cells by administering a composition comprising two or more respiratory chain cycle intermediates, precursors or cofactors, classified in Class 514, subclass depending on the compounds, for example.

VI. Claims 15-16 and 20 drawn to process of improving bioenergy of cells by administering a composition comprising two or more urea cycle intermediates, precursors or cofactors, classified in Class 514, subclass depending on the compounds.

VII. Claim 21 drawn to process of improving bioenergy of cells by administering a composition comprising lipoic acid and various other ingredients, classified in Class 424, subclass 93.5, for example.

VIII. Claim 22 drawn to process of improving bioenergy of cells by administering a composition comprising succinate and various other ingredients, classified in Class 424, subclass 94.1, for example.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the precursors as claimed can be used in a materially different process of using that product such as use as intermediates in biochemical processes for the manufacture of pharmaceuticals..

Art Unit: 1651

Inventions II and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the precursors as claimed can be used in a materially different process of using that product such as use as intermediates in biochemical processes for the manufacture of pharmaceuticals..

Inventions III and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the precursors as claimed can be used in a materially different process of using that product such as use as intermediates in biochemical processes for the manufacture of pharmaceuticals..

Each of groups I, II, and III is directed to separate and distinct inventions, Group I is directed to a composition comprising two or more Krebs cycle intermediates and/or precursors and cofactors thereof; Group II is drawn to a composition comprising two or more chemical substances of respiratory chain cycle compounds and/or precursors and cofactors thereof, and group III is drawn to a composition comprising two or more urea cycle intermediates, and/or precursors and cofactors thereof. The products of groups I, II, and III would be expected to have distinct morphological, functional and physiological properties as evidenced by divergent classification and process of making. These products are not required one for the other.

Each of groups IV, V, VI, VII and VIII is directed to separate and distinct inventions. These methods are distinct both physically and functionally, require different ingredients to be administered and produce different products.

~~10-~~ The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches (as indicated by the different classification). The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of Group I would not necessarily anticipate or make obvious the any of the other groups.

For these reasons restriction for examination purposes is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Art Unit: 1651

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



Irene Marx
Primary Examiner
Art Unit 1651